

# CDDH comments on the Parliamentary Assembly Recommendation 2180(2020) - THE IMPACT OF THE COVID-19 PANDEMIC ON HUMAN RIGHTS AND THE RULE OF LAW

## 94<sup>th</sup> meeting – 15 – 18 June 2021 - CDDH(2021)R94

1. The Steering Committee for Human Rights (CDDH) takes note with interest of the Parliamentary Resolution 2338(2020) on the impact of the Covid-19 pandemic on human rights and the rule of law. It fully shares the invitation of the Parliamentary Assembly to the Committee of Ministers to review national experience in responding to the Covid-19 pandemic, with a view to pooling knowledge and experience and identifying good practice on how to ensure an effective response to public health emergencies that respects human rights and the rule of law.
2. The CDDH is aware of the fact that, during emergencies or similar exceptional situations, states could be tempted to seek to achieve a more rapid, flexible and effective response, with in some cases the consequence of refraining from normal checks and balances, which fact could be proven as hazardous from the perspective of human rights, democracy, and the rule of law<sup>1</sup>.
3. The CDDH felt that, to maintain the needed check and balances during exceptional situations, national authorities should identify and assess (actual or potential) human rights impacts and risks of the measures taken or envisaged to face the exceptional situation. The CDDH already expressed before the Committee of Ministers its willingness and availability to work in this field during the next four-year Programme.
4. Following the recommendations from the Parliamentary Assembly and in synergy with ongoing pandemic-related work in other sectors of the Council of Europe, work that the CDDH might conduct could result, for instance, in:
  - (i) drafting a report to the Committee of Ministers in relation to derogations from the European Convention on Human Rights in case of major hazards (pandemic, natural disasters, etc.) along with the case-law of the European Court of Human Rights and the relevant texts of the Venice Commission (notably its list of “Principles on the Rule of Law Checklist” of May 2020 and its “Rule of Law Checklist”) Committee of Legal Advisers on Public International Law (CAHDI) as well as international legal standards, in order to provide practical guidance to member States on the issue of derogations and to enhance procedural coherence and consistency in this respect;
  - (ii) drafting a *Toolkit for human rights impact assessment of the measures taken by the state*, in case of major hazards (pandemic, natural disasters, etc.) with the purpose to assist member States in balancing tension between, on the one hand, the States’ positive obligations to respect the proportionality of the restrictive measures applicable generally to the population on the other hand in case of major hazards. This text could contain a selection of national good practices;
  - (iii) based on the above-mentioned texts, a non-binding instrument (for instance, a Recommendation to member States) could be drafted at a later stage, with the purpose to assist member States to fully respect human rights, democracy and the rule of law in case of major hazards like the present covid-19 crisis.

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<sup>1</sup> Cf. Parliamentary Assembly Resolution 2338(2020), para. 4.

Text of Recommendation 2180(2020)

## **THE IMPACT OF THE COVID-19 PANDEMIC ON HUMAN RIGHTS AND THE RULE OF LAW**

### Parliamentary Assembly

1. The Assembly refers to its Resolution 2338(2020) on the impact of the Covid-19 pandemic on human rights and the rule of law. It refers further to its Resolution 2209(2018) and Recommendation 2125(2018), entitled "State of emergency derogations under Article 15 of the European Convention Committee of Ministers' reply to that recommendation.
2. The Assembly considers that derogations to the European Convention on Human Rights (ETS No. 5, the Convention) may pose a risk to the maintenance of common minimum human rights standards across Europe. It recalls that the aim of its 2018 proposals was to assist national authorities in understanding the legal complexities in this area and to encourage a more harmonised approach in future.
3. The Assembly notes that an unprecedented number of 10 States derogated from the Convention in respect of measures taken in response to the Covid-19 pandemic, showing a notable lack of consistency in national practice in important areas. Whilst accepting that a perfectly uniform approach is neither necessary, feasible nor desirable, the Assembly considers that this situation underlines the need for guidance and harmonisation.
4. The Assembly therefore invites the Committee of Ministers to reconsider the recommendation that it examine State practice in relation to derogations from the Convention, in the light of the requirements of Article 15 and the case law of the European Court of Human Rights, the requirements of international law and the Assembly's Resolutions 2209(2018) and 2338(2020), with a view to identifying legal standards and good practice and, on that basis, adopting a recommendation to member States on the matter.
5. The Assembly further invites the Committee of Ministers to give terms of reference to the appropriate intergovernmental committee or committees to review national experience in responding to the Covid-19 pandemic, with a view to pooling knowledge and experience and identifying good practice on how to ensure an effective response to public health emergencies that respects human rights and the rule of law. The results of this review could form the basis for future Committee of Ministers guidelines, recommendations or guidance.

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